

REHEARING VERIFIED REBUTTAL STATEMENT

OF TERRY L. MURRAY
ON BEHALF OF RHYTHMS LINKS, INC.

DOCKET NO. 00-0312 and 00-0313

00-0312/0313
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1 1. Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS
2 ADDRESS.

3 A. My name is Terry L. Murray. I am President of the consulting firm
4 Murray & Cratty, LLC. My business address is 227 Palm Drive,
5 Piedmont, CA 94610.

6 2. Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS
7 PROCEEDING?

8 A. Yes, I filed a Rehearing Verified Statement on November 21, 2000. I also
9 filed a Verified Statement on May 15, 2000, and a Supplemental Verified
10 Statement on June 22, 2000, on behalf of Covad Communications
11 Company ("Covad") and Rhythms Links, Inc. ("Rhythms"). My
12 curriculum vitae, provided as Attachment TLM-1 to the May 15, 2000
13 Verified Statement, presents my qualifications and experience as they
14 relate to the issues in this proceeding.

15 3. Q. WHAT IS THE PURPOSE OF YOUR REHEARING VERIFIED
16 REBUTTAL STATEMENT?

17 A. Rhythms Links, Inc. ("Rhythms") has asked me to respond to the
18 economic and policy related arguments that Ameritech Illinois

1 ("Ameritech-IL") has presented concerning rehearing issues one (whether
2 the Commission should order line sharing over its "Project Pronto"
3 architecture) and four (whether the previously adopted non-recurring
4 charges for cross-connects are reasonable in light of the prices for cross-
5 connects announced following the agreement between SBC and Covad
6 Communications).

7 **I. THE COMMISSION SHOULD ORDER UNBUNDLED ACCESS TO LINE**
8 **SHARING OVER THE "PROJECT PRONTO" FIBER-FED LOOP**
9 **NETWORK ARCHITECTURE.**

10 **4. Q. WHAT IS YOUR UNDERSTANDING OF THE ISSUE**
11 **CONCERNING LINE SHARING OVER SBC'S "PROJECT**
12 **PRONTO" ARCHITECTURE THAT IS THE SUBJECT OF THIS**
13 **REHEARING?**

14 A. The issue for rehearing is whether the Commission was correct when it
15 ordered Ameritech-IL to provide line sharing over the fiber-fed NGDLC
16 Project Pronto architecture, and whether Project Pronto should be
17 provided as a UNE rather than as a service only.

18 **5. Q. DOES THE COMMISSION ALSO NEED TO CONSIDER**
19 **WHETHER IT IS TECHNICALLY FEASIBLE TO PROVIDE LINE**
20 **SHARING OVER THE PROJECT PRONTO NETWORK?**

21 A. No. The Commission does not appear to have intended to raise that issue,
22 and there is no need to do so. Ameritech-IL has admitted that, physically
23 and technically, line sharing can occur over its fiber-fed loop architecture.

1 Ameritech-IL has also affirmed that, in various arrangements sometimes
2 using and sometimes not using the same physical fiber, it plans to offer a
3 "service" that is the same as line sharing, both functionally and from the
4 end user's perspective (*see, e.g.*, Ameritech Illinois Ex. 6.0 (Lube) at 14
5 and 24). Hence, the bulk of issues that Ameritech-IL's witnesses raise in
6 their direct testimony seem designed to cloud rather than to clarify the
7 issue that the Commission opened for rehearing.

8 6. Q. WOULD THE BROADBAND "SERVICE" THAT AMERITECH-IL
9 PROPOSES TO PROVIDE IN LIEU OF UNBUNDLED ACCESS
10 TO ITS FIBER-FED PROJECT PRONTO NETWORK
11 ADEQUATELY SUPPORT A COMPETITIVE MARKET FOR
12 XDSL SERVICES IN ILLINOIS?

13 A. No. The broadband "service" that Ameritech-IL now proposes to provide
14 to its AADS affiliate and to competitive providers is, in effect, merely a
15 renamed version of the retail service that the SBC incumbents originally
16 planned to roll out as their own. Hence, SBC's proposal to limit access to
17 the Project Pronto network to the "service" that it proposes is effectively a
18 proposal to limit CLECs to reselling only the services and options that
19 SBC unilaterally decides it is willing to offer.

20 SBC's proposal would also eliminate unbundled network elements
21 as a market entry vehicle for competitors from an ever-increasing portion
22 of its loop plant. A UNE-based entry option is an integral part of the
23 Congressional mandate in the Telecommunications Act of 1996. I am

1 unaware of any portion of the Act or the FCC's decisions implementing
2 the Act that treats the availability of a pure resale option as an acceptable
3 substitute for unbundling the facilities and functions that make up the
4 underlying "service."

5 To the contrary, the FCC stated in its *UNE Remand Order* that:

6 We assign little weight in our "impair" analysis to
7 the ability of a requesting carrier to use the incumbent
8 LECs' resold or retail tariffed services as alternatives to
9 unbundled network elements. In the *Local Competition*
10 *First Report and Order*, the Commission expressly rejected
11 the incumbent LECs' argument that requesting carriers are
12 not impaired in their ability to provide service if they can
13 provide their proposed service by purchasing the service at
14 wholesale rates from the incumbent LEC. As the
15 Commission concluded in that Order, allowing incumbent
16 LECs to deny access to unbundled elements solely, or
17 primarily, on the grounds that an element is equivalent to a
18 service available at resale would lead to impractical results;
19 incumbent LECs could completely avoid section
20 251(c)(3)'s unbundling obligations by offering unbundled
21 elements to end users as retail services. In other words,
22 denying access to unbundled elements on the grounds that
23 an incumbent LEC offers an equivalent retail service could
24 force requesting carriers to purchase, for example, an
25 unbundled loop and switching out of an incumbent's retail
26 tariff at a wholesale discount, subject to all of the
27 associated tariff restrictions. US West maintains that it
28 need not unbundle local transport because requesting
29 carriers can purchase its tariffed special access services. In
30 light of the little weight we assign to the availability of
31 resold services in our analysis, we reject US West's
32 argument. This argument would foreclose competitive
33 LECs from taking advantage of the distinct opportunity
34 Congress gave them, through section 251(c)(3), to use
35 unbundled network elements.¹

¹ *Third Report and Order and Fourth Further Notice of Proposed Rulemaking* in CC Docket
96-98 (hereinafter "*UNE Remand Order*") at ¶ 67 (internal footnotes and citations omitted).

(continued)

1 Even though Ameritech-IL's broadband wholesale service offering
2 may not be specifically tariffed, it is certainly a general wholesale resale
3 offering. The FCC further explained in the *UNE Remand Order* that
4 general offerings, such as Ameritech-IL's wholesale offering, are not
5 viable alternatives to the incumbent's unbundled network element because
6 "competitors would have no assurance that the incumbent LEC would not
7 change the [offering] in such a manner that the competitive LEC could no
8 longer rely on it to provide the services it seeks to offer."²

9 **7. Q. HOW WOULD COMPETITION BE AFFECTED IF THE**
10 **COMMISSION ALLOWED AMERITECH-IL TO TREAT LINE**
11 **SHARING OVER THE PROJECT PRONTO NETWORK AS A**
12 **"SERVICE" INSTEAD OF AN UNBUNDLED NETWORK**
13 **ELEMENT?**

14 A. If the Commission permits Ameritech-IL to leverage its control of Project
15 Pronto, and deny access to unbundled network elements that would
16 otherwise have been available, the Commission will enable Ameritech-IL
17 to reverse the intended pro-competitive effect of structurally separating the
18 incumbent from its advanced service affiliate. If unaffiliated competitors
19 can only utilize the Project Pronto network to resell the same "service"
20 that SBC has developed and tailored for its data affiliate, Ameritech-IL

² *UNE Remand Order* at ¶ 69.

1 will be able to dictate completely the terms and conditions under which
2 competitors offer DSL services to the majority of end users. Significantly,
3 competitors will have little ability to offer Illinois consumers unique
4 service, and service quality options, via the Project Pronto architecture.

5 The "resale only" approach also denies competitors many of the
6 procedural protections associated with unbundled network elements. For
7 example, the voluntary commitments that SBC undertook to obtain its
8 waiver of the SBC-Ameritech merger decision requirements for ownership
9 of line cards and the "Optical Concentration Devices" (ATM switches)
10 associated with Project Pronto have no force past the time that SBC is
11 allowed to reintegrate its advanced services operation with its incumbent
12 local exchange carrier operation. I understand that the SBC/Ameritech
13 merger conditions are expected to sunset the later of April 8, 2003 or 36
14 months after Ameritech ceases to process trouble reports of its advanced
15 services affiliate on an exclusive basis.³ After that point, Ameritech-IL
16 could arbitrarily withdraw the broadband "service" offering or unilaterally
17 amend its prices, terms and conditions in a way that would make the
18 offering even less attractive to competitors. Even in the interim period,
19 parties do not have the same arbitration rights concerning the "service" as
20 they would for an unbundled network element or elements. For instance,
21 CLECs cannot arbitrate regarding provisioning issues associated with this

³ *SBC/Ameritech Merger Order*, Appendix C at ¶ 12.

(continued)

1 offering under 252 of the Act.⁴ Nor do CLECs have any right to TELRIC-
2 based costs and prices for the “service” other than Ameritech-IL’s
3 voluntary agreement.

4 Moreover, absent the constraint of regulatory oversight, it is
5 simply rational behavior for incumbents such as Ameritech-IL to develop
6 their local exchange networks in a manner that supports advanced services
7 options that they or their affiliates plan to implement, while creating
8 technical or pricing impediments for competing providers. Ameritech-IL
9 has a very real incentive to delay competitors’ access to options that are
10 built into the incumbents’ networks. For example, just as SBC initially
11 deployed line sharing for itself while forcing CLECs to purchase and use a
12 separate loop to provide xDSL services, SBC has advised competitors that
13 its Project Pronto “service” will only support unbundled ADSL service at
14 this time, but SBC has announced to investors that it will use the Project
15 Pronto network itself to provide and generate revenue from many new
16 service options, including, for example, HDSL.

17 Unless the Commission clearly directs Ameritech-IL to consider
18 the needs of competitors as part of the network modernization process by

⁴ Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission’s Rules, CC Docket 98-141, *Second Memorandum Opinion and Order*, Released September 8, 2000 (“SBC Waiver Order”) at ¶ 30.

1 requiring all such modernization to be available as UNEs, Ameritech-IL
2 will continue to follow its obvious self-interest, "slow rolling"
3 competitors' access to network options. Such a situation forces
4 competitors to undertake a lengthy and inefficient process of bringing
5 legal and regulatory challenges against Ameritech-IL to win access to
6 network options one-at-a-time.

7 **8. Q. THROUGHOUT ITS PRESENTATION, AMERITECH-IL**
8 **REPEATS THAT ITS PROPOSAL TO LIMIT ACCESS TO THE**
9 **PROJECT PRONTO NETWORK IS REASONABLE BECAUSE**
10 **COMPETITORS WILL HAVE NUMEROUS OTHER OPTIONS**
11 **AVAILABLE BY WHICH TO REACH THE SAME END USERS.**
12 **IS AMERITECH-IL'S REPRESENTATION CORRECT?**

13 **A.** No. The Commission need only examine SBC's own business plans to
14 verify that Ameritech-IL's supposed array of options is largely devoid of
15 real opportunity. If SBC itself does not consider the various supposed
16 alternatives as viable entry vehicles for its own DSL services, it is likely
17 that those options will not be viable for competitors either. In other
18 words, if SBC's own DSL provider affiliate does not believe it is
19 sustainable to provide services limited to all-copper facilities, when other
20 providers have cost-based prices available for fiber-fed options, then the
21 Commission should very seriously doubt the practical reality of such
22 supposed alternatives. The same is true of SBC's decision rejecting the
23 collocation of its own DSLAMs at remote terminals.

1 The result of adopting Ameritech-IL's position is that SBC would
2 likely be the only provider with cost-based, efficient access to the loops
3 served by the Project Pronto network architecture for the full range of
4 advanced services offerings. That result would preclude the development
5 of a healthy, competitive market in Illinois.

6 **9. Q. AT PAGES 7-8 OF HIS DIRECT TESTIMONY, MR. LUBE**
7 **ASSERTS THAT THE FCC DOES NOT REQUIRE LINE**
8 **SHARING OVER NON-COPPER LOOPS. IS THAT ASSERTION**
9 **CORRECT?**⁵

10 **A. That is not my understanding of the FCC's line-sharing rules. The FCC**
11 has observed:

12 When an incumbent has deployed DLC systems,
13 requesting carriers must install DSLAMs at the remote
14 terminal instead of at the central office in order to provide
15 advanced services. We agree that, if a requesting carrier is
16 unable to install its DSLAM at the remote terminal or
17 obtain spare copper loops necessary to offer the same level
18 of quality for advanced services, the incumbent LEC can
19 effectively deny competitors entry into the packet
20 switching market.⁶

21 In the case of SBC's Project Pronto, the option of obtaining spare copper
22 will not typically enable competitors to obtain "same level of quality for

⁵ Throughout this section of my testimony, I respond to Mr. Lube instead of Ms. Chapman simply because, while both witnesses appear to cover the same positions, Mr. Lube tends to provide a more detailed accounting of Ameritech-IL's positions.

⁶ *UNE Remand Order* at ¶ 313. An additional hurdle that the FCC does not appear to have explicitly contemplated is that a new entrant collocating its DSLAM at the incumbent's remote terminal cannot use its own packet switching facilities unless the incumbent is able to segregate the competitor's data streams from its own end-users' data streams as those data arrive at the central office.

1 advanced services” as Ameritech-IL would enjoy using a fiber-fed loop.
2 Project Pronto is designed in large measure specifically to enable service
3 to customers at distances from a central office at which the available
4 copper loops cannot reliably support xDSL services. Hence, the option of
5 using whatever available copper facility remains is effectively no option at
6 all.

7 In its *Line Sharing Order*, the FCC reiterates:

8 In the *Local Competition Third Report and Order*,
9 we found that lack of access to subloop elements would
10 preclude competitors from offering some broadband
11 services to a significant market segment. Accordingly, we
12 concluded that incumbent LECs must provide unbundled
13 access to subloops, wherever technically feasible.⁷

14 and further states that:

15 In the *Local Competition Third Report and Order*,
16 we specifically noted that requesting carriers are
17 functionally precluded from deploying xDSL services
18 where incumbent carriers have deployed DLC systems
19 unless the requesting carrier can otherwise obtain access to
20 the customer’s copper loop before the traffic is multiplexed
21 at the incumbent’s remote terminal.⁸

22 After revisiting its prior requirements the FCC concludes, “incumbent
23 LECs are required to unbundle the high frequency portion of the local loop

⁷ *Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98*, FCC 99-355, adopted November 18, 1999, released December 9, 1999 (hereinafter referred to as “*Line Sharing Order*”) at ¶ 89, footnote omitted.

⁸ *Id.* at ¶ 90.

1 even where the incumbent LEC's voice customer is served by DLC
2 facilities."⁹

3 Hence, the FCC requires that Ameritech-IL provide unbundled
4 access to the line sharing over fiber-fed loops at all points. Given the
5 nature of the Project Pronto architecture, the most efficient means of
6 obtaining that access is for competitors to be able to integrate those
7 elements with DSLAM and splitter functionality in an efficient, plug-and-
8 play arrangement (as the service was designed to be offered).

9 10. Q. IS AMERITECH-IL'S SUGGESTION THAT SOME MANNER OF
10 PHYSICAL, ADJACENT COLLOCATION AT THE REMOTE
11 TERMINAL MEETS THE FCC REQUIREMENT FOR
12 UNBUNDLED ACCESS TO LINE SHARING OVER FIBER-FED
13 LOOPS REASONABLE?

14 A. No. Staff witness Mr. Clausen correctly suggests at page 8 of his direct
15 testimony that physical collocation at a remote terminal ("RT") is simply
16 not a viable option in many situations. As SBC itself has noted, "there is
17 little or no excess space in cabinets," which comprise one of the three
18 types of remote terminal currently deployed.¹⁰ Ameritech-IL has admitted
19 that the majority of RTs being deployed through Project Pronto will be
20 housed in cabinets. Cabinets are the smallest of the three enclosures for

⁹ *Id.* at ¶ 91.

1 RTs; thus, space constraints will be a critical issue. Because of these
2 space constraints, it is unlikely that more than one or two competitors
3 (including the incumbent's own advanced services affiliate) will be able to
4 place equipment at a particular RT location.

5 SBC has noted other substantial potential problems with physical
6 collocation at a remote terminal, such as the possibilities that it would
7 require "a so-called 'village of RTs,' which neighborhoods and
8 governmental entities would not find acceptable" or the need to "create
9 RTs the size of central office."¹¹ Zoning and right-of-way issues could
10 delay or prevent the installation of new entrants' facilities and increase
11 their costs.

12 Equally important, the expense of collocation at the RT would
13 place unaffiliated competitors at a substantial financial disadvantage
14 relative to Ameritech-IL or its advanced services affiliate, when
15 Ameritech-IL or its affiliate is able to offer DSL-based services using line
16 cards placed in Ameritech-IL's RT. The FCC has already decided to
17 require line sharing because "the cost and delay of obtaining collocation in
18 every central office where the requesting carrier provides service using
19 unbundled loops" would impair CLECs' ability to serve the residential and

¹⁰ See, SBC letter to Mr. Lawrence R. Strickling, Chief Common Carrier Bureau, Federal Communication Commission, Re: CC Docket No. 98-141 - Ownership of Plugs/Cards and OCDs, February 15, 2000, at 2 ("SBC Letter").

¹¹ *Id.*

1 small business markets.¹² The economic obstacles are even greater when
2 CLECs must collocate at RTs. Unlike at a central office, the number of
3 subscribers served by an RT is often as low as a hundred or a few hundred
4 lines in total. It is therefore likely that the cost of establishing an entire
5 collocation arrangement at each remote terminal will never make sense
6 given the small number of customers that any given CLEC might serve
7 from an individual RT location.

8 The impracticality of physical collocation at an RT becomes even
9 more obvious as SBC continues to erect new economic barriers to that
10 option. For example, in recent hearings in Texas, SBC provided the first
11 hints regarding the potential pricing of the "Engineering Controlled
12 Splice" ("ECS") that it now proposes to require for all unbundled subloop
13 interfaces at the RT. SBC's testimony suggests that the ECS alone might
14 run in the range of \$15,000-\$20,000 per RT, which competitors would
15 now incur in addition to all of the other existing costs of a physical remote
16 collocation arrangement.¹³ Hence, requiring competitors to collocate
17 stand-alone DSLAMs at the RT may effectively eliminate competition in
18 many or most locations served by DLC systems.

¹² *Line Sharing Order* at ¶ 30 (citing the *UNE Remand Order* at ¶ 306).

¹³ Texas Public Utility Commission Docket Nos. 22168, Petition of IP Communications Corporation to Establish Public Utility Commission of Texas Oversight Concerning Line Sharing Issues and 22469, Complaint of Covad Communications Company and Rhythms Links, Inc. against Southwestern Bell Telephone Company and GTE Southwest Inc. for Post-Interconnection and Arbitration under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions and Related Arrangements for Line-Sharing, Tr. 450:18-21 (Southwestern Bell Telephone, Welch), November 28, 2000.

1 11. Q. AT, *E.G.*, PAGE 14, MR. LUBE SUGGESTS THAT
2 COMPETITORS' ACCESS TO LINE SHARING CANNOT BE
3 ADVERSELY AFFECTED BY PROJECT PRONTO BECAUSE
4 COMPETITORS "MAY STILL CHOOSE, INSTEAD, TO
5 ACCOMPLISH LINE SHARING VIA THE PRE-EXISTING FULL
6 COPPER LOOP OR SUBLOOP." IS MR. LUBE'S POSITION
7 CORRECT?

8 A. No. As I noted above, Mr. Lube's suggestion that competitors can avail
9 themselves of the existing options to provide xDSL service while Project
10 Pronto passes them by is misleading at best. Project Pronto extends DSL
11 capability to end users who did not have that option before, *e.g.*, to
12 customers too far from an Ameritech-IL central office to receive xDSL
13 over a copper loop (other than, perhaps, IDSL, which is not compatible
14 with line sharing). Hence, to say that competitors can still use the existing
15 copper network facilities is to say that they can continue to be unable to
16 offer those customers the option of obtaining voice and DSL-based
17 services over a single termination at the end user's premises. Meanwhile,
18 Ameritech-IL's affiliate will enjoy the ability to provide both voice and
19 DSL-based services over a single termination via the Pronto architecture.

20 12. Q. SHOULD THE COMMISSION DEFER TO MR. LUBE'S
21 TECHNICAL ARGUMENT THAT THE PROJECT PRONTO
22 ARCHITECTURE DOES NOT MEET THE DEFINITIONAL
23 REQUIREMENTS FOR LINE SHARING?

1 A. No. The technical distinctions that Mr. Lube attempts to draw have no
2 relevance to either the functionality that competitors require or the way
3 that end users perceive the options available to them. Where Ameritech-
4 IL has deployed Project Pronto, end users will be able to receive both
5 voice and DSL service from an SBC affiliate over the same copper pair
6 that terminates their basic exchange service. Moreover, the SBC affiliate
7 will be able to do so without necessarily having to add any of its own
8 equipment to the loop plant. Hence, the service provided over the Project
9 Pronto network is substantially the same as line sharing functionally.
10 Indeed, the similarity is so great that, as Mr. Lube must first admit and
11 then attempt to explain away at page 15 of his rehearing direct testimony,
12 even SBC has heretofore referred to its proposed Project-Pronto-based
13 service option as line-sharing. SBC recently renamed its product because,
14 Mr. Lube now claims, SBC's original identification of its proposed service
15 "was misleading." As I note above, the opposite is true. It is Ameritech-
16 IL's current effort to rename and explain away the line-sharing
17 functionality of its Project Pronto arrangement that is misleading.

18 At pages 20-24 of his rehearing direct testimony, Mr. Lube himself
19 admits that voice and data signals can and, in some cases, will traverse the
20 same physical path in the fiber portion of a DLC-served loop. The
21 Commission should not allow SBC's decision to deploy an arrangement
22 that most often physically separates the voice and data signals over a

1 portion of the Project Pronto loop architecture to enable SBC to
2 discriminate against unaffiliated competitors.

3 **13. Q. IS THERE AN ADDITIONAL REASON THAT MR. LUBE'S**
4 **CONTENTION THAT LINE SHARING DOES NOT OCCUR OVER**
5 **PROJECT PRONTO IS IRRELEVANT?**

6 A. Yes. To the extent that Ameritech-IL's argument implies that line sharing
7 using the Project Pronto architecture should not be priced on the same
8 basis as unbundled network elements, the Commission should disregard
9 that argument. The FCC explicitly deferred to the states the issue of
10 setting cost-based prices for unbundled access to the Project Pronto
11 architecture. That finding was, in turn, based on SBC's own supposed
12 voluntary offer to set prices for line sharing and other xDSL options
13 provided over Project Pronto based on the same cost-based pricing
14 methodology that is applicable to unbundled network elements.¹⁴ Hence,
15 Ameritech-IL seems to take back the promises it has already made to the
16 FCC in exchange for the right to own the line cards used in the Project
17 Pronto NGDLC equipment.

18 **14. Q. STARTING AT PAGE 26 OF HIS REHEARING DIRECT**
19 **TESTIMONY AND CONTINUING THROUGH PAGE 36, MR.**
20 **LUBE PRESENTS THREE REASONS THAT HE CLAIMS IT IS**
21 **IMPROPER OR IMPOSSIBLE TO PROVIDE LINE SHARING**

¹⁴ SBC Waiver Order at ¶ 25.

1 **OVER PROJECT PRONTO ON AN UNBUNDLED BASIS. ARE**
2 **MR. LUBE'S ARGUMENTS REASONABLE?**

3 A. No. Mr. Lube's arguments are so strained that they provide additional
4 confirmation of the lengths to which an incumbent will go to maintain its
5 incumbency advantage. Mr. Riolo will discuss the fallacies in Mr. Lube's
6 more technical assertions in detail. Hence, I will only briefly describe the
7 flaws in Mr. Lube's assertions herein.

8 15. **Q. WHAT IS MR. LUBE'S FIRST CLAIM?**

9 A. Mr. Lube's first assertion is that it "is not physically possible to unbundle
10 this [Project Pronto] network architecture because of the manner in which
11 the components of the architecture interconnect and interwork with one
12 another." Mr. Lube's primary basis for this claim appears to be that "a
13 single end user's DSL service does not occupy an accessible, physical,
14 end-to-end path" and does not "bear a one-to-one correspondence
15 throughout the DSL service's path." Even if one puts aside the fact that
16 SBC originally itself referred to this product as an unbundled network
17 element, this claim is simply silly. A voice-grade loop configured over a
18 DLC system with concentration or a call passing through a digital switch
19 both share these characteristics. Hence, it would have been impossible
20 ever to unbundle either basic loops or switching based on Mr. Lube's new
21 criteria.

22 16. **Q. WHAT IS MR. LUBE'S SECOND CLAIM?**

1 A. Mr. Lube's next assertion is that the fiber portion of a line-sharing
2 arrangement uses packet switching, which Ameritech-IL is not required to
3 unbundle "except in extremely limited circumstances that do not apply to
4 Ameritech Illinois." His defense of this position is riddled with confusion
5 and misdirection.

6 Counsel informs me that this Commission has specific authority
7 under both the Telecommunications Act of 1996 and the FCC's orders to
8 identify any additional unbundled network elements that are needed to
9 support competition in Illinois. Thus, contrary to Mr. Lube's testimony,
10 this Commission need not limit itself to requiring Ameritech-IL to offer
11 the minimum set of unbundled network elements that the FCC has
12 adopted.

13 Moreover, a close examination of Mr. Lube's attempt to explain
14 why the Project Pronto architecture will not meet the four FCC criteria for
15 requiring unbundled packet switching reveals that the FCC rules would
16 require Ameritech-IL to provide unbundled packet switching in many (if
17 not most or all) Project Pronto arrangements. For example, Mr. Lube
18 argues that the FCC's second condition for requiring unbundled access to
19 packet switching, that "no spare copper loops" are available will not be
20 met because Project Pronto is an overlay network.¹⁵ Hence, Mr. Lube

¹⁵ Mr. Lube appears to argue that the Project Pronto architecture somehow fails to meet the FCC's first condition for requiring unbundled access to packet switching. As the first criterion is met merely by the incumbent LEC having "deployed digital loop carrier systems," I cannot imagine how Mr. Lube reaches that conclusion.

1 suggests, the previously existing copper will always be available. Mr.
2 Lube's argument entirely ignores the portion of the FCC requirement that
3 states that the spare copper must be "capable of supporting the xDSL
4 services the requesting carrier seeks to offer." As I noted above, SBC's
5 deployment of Project Pronto is primarily being placed where existing
6 copper loops do not support xDSL. Hence, the remaining copper that
7 SBC's overlay approach will leave in place will generally not meet the
8 FCC's second criterion for exempting packet switching from an
9 unbundling requirement.

10 The FCC's third criterion is that "the incumbent LEC has not
11 permitted a requesting carrier to deploy a Digital Subscriber Line Access
12 Multiplexer ['DSLAM'] at the remote terminal." In the Project Pronto
13 architecture, an ADSL Digital Line Unit ("ADLU") card plugs directly
14 into the RT as part of the (line-shared or non-line-shared) delivery of
15 xDSL service. As Mr. Lube admits later in his testimony, the FCC has
16 explicitly found that "the ADLU card is the functional equivalent of a
17 DSLAM"¹⁶ in the Project Pronto architecture. Mr. Lube himself also
18 champions Ameritech-IL's position that it will not allow competitors to
19 deploy ADLU cards in the RT on the same basis as Ameritech-IL.
20 Moreover, terms and prices under which Ameritech-IL will allow *any*
21 form of DSLAM collocation at the RT have not yet been established;

¹⁶ Ameritech Illinois Ex. 6.0 (Lube) at 45.

1 hence, DSLAM collocation cannot be considered available. Moreover, as
2 I noted above, Ameritech-IL's eventual pricing of any such option is likely
3 to foreclose any real competitive access to DSLAM collocation. Hence,
4 for any of these reasons individually or in combination, the reasonable
5 conclusion is that the Project Pronto architecture does not meet this
6 portion of the FCC exemption test in many, most or all locations.

7 Finally, Mr. Lube's claims that the Project Pronto architecture
8 passes the FCC's fourth condition for exemption from the packet
9 switching unbundling requirement, that the "incumbent LEC has deployed
10 packet switching capability for its own use," are inaccurate. Mr. Lube
11 claims that Project Pronto passes this test because the packet switching
12 will not be for Ameritech-IL's use but "only for CLECs' use." Any
13 moderately clear-eyed evaluation of the development of Project Pronto
14 reveals the absurdity of this position. SBC developed plans for deploying
15 Project Pronto, including its packet switching capability, at least a year
16 ago before CLECs knew anything about xDSL-capable NGDLC, and
17 explicitly because SBC believes that it can make a substantial profit by
18 doing so. Nowhere in SBC's announcement of Project Pronto did it claim
19 or imply that the project was undertaken "only for CLECs' use," as Mr.
20 Lube's new history now claims. Clearly, Ameritech-IL proposes to use
21 Project Pronto's packet-switching capability – even if only to provide
22 service to its new affiliate.

1 Furthermore, at the end of the period during which the merger
2 conditions apply, Ameritech-IL is free to offer its own retail broadband
3 services over the Project Pronto architecture, making use of the packet
4 switching capability to which Mr. Lube refers. The Commission should
5 not base "permanent" decisions concerning the unbundling of Project
6 Pronto on temporary requirements, such as the advanced services affiliate
7 condition. Mr. Lube's argument is additionally ironic in that it attempts to
8 use SBC's agreement to create a separate advanced services affiliate, and
9 the claim that the deployment of packet switching is "for CLECs," as a
10 means to deny SBC's actual competitors the very access for which they
11 are fighting in this proceeding.

12 17. **Q. WHAT IS MR. LUBE'S THIRD CLAIM?**

13 A. Mr. Lube asserts that line sharing over Project Pronto does not meet the
14 "necessary" and "impair" standards required for an element to be declared
15 an unbundled network element. He supports that assertion primarily by
16 reiterating his prior claim that competitors will have sufficient various
17 options (including Ameritech-IL's wholesale broadband service, use of
18 parallel "home-run copper" loops and collocation of DSLAMs at the RT)
19 absent unbundled access to Project Pronto. For the same reasons that I
20 have already discussed above, and the technical reasons provided in Mr.
21 Riolo's accompanying testimony, these supposed options fall far short of
22 providing competitors with a competitive opportunity equivalent to that
23 available to the SBC affiliate. That is, without access to unbundled

1 network elements over the Project Pronto architecture, the ability of
2 unaffiliated providers to offer line-shared xDSL services that are
3 comparable in price and quality to the offerings of Ameritech-IL's data
4 affiliate will be severely "impaired."

5 In particular, even if the options that Mr. Lube identifies may, in
6 some instances, provide CLECs with a reasonable alternative to unbundled
7 access to Project Pronto, Ameritech-IL has not and cannot show that
8 CLECs will have a *ubiquitous* alternative to line sharing over the fiber-fed
9 NGDLC Project Pronto architecture. Lack of access to line sharing over
10 the Project Pronto architecture would materially restrict the number and
11 geographic scope of the customers that CLECs can serve, as I have
12 explained above. Thus, in my opinion, a Commission decision to mandate
13 unbundling of the Project Pronto architecture is consistent with the pro-
14 competitive policy considerations that the FCC described in its *UNE*

15 *Remand Order:*

16 It is ... reasonable to expect that in some cases, the
17 ability to serve ubiquitously will be necessary to meet
18 consumer demand for competitive alternatives in broad
19 geographic areas. In such cases, lack of access to the
20 incumbent's unbundled network elements could
21 significantly thwart the competitor's ability to respond to
22 consumer demand. Denying access to the incumbent's
23 unbundled network elements, when use of alternative
24 sources would materially diminish the competitors' ability
25 to serve their intended geographic area, would be
26 inconsistent with the goal of the 1996 Act to bring
27 competition to the greatest number of customers. Indeed,
28 the inability to provide service ubiquitously may be
29 especially important for competitive LECs seeking to serve

1 residential and small business customers located throughout
2 a state.¹⁷

3 18. Q. GIVEN THE IMPERATIVE THAT THE COMMISSION ORDER
4 AMERITECH-IL TO MAKE LINE SHARING AVAILABLE ON AN
5 UNBUNDLED BASIS OVER THE PROJECT PRONTO
6 NETWORK ARCHITECTURE, WHAT ACTIONS SHOULD THE
7 COMMISSION TAKE?

8 A. As I discussed above, the Commission should require Ameritech-IL to
9 unbundle its Project Pronto architecture and to offer UNE loops and
10 subloops. In addition, the Commission should adopt costs and prices to
11 accommodate a collocation option in which Ameritech-IL will place line
12 cards in the DLC equipment at the RT on behalf of the new entrant.¹⁸
13 Such an option is clearly in the spirit of the *UNE Remand Order*, which
14 contemplates that "a requesting carrier [be allowed] to collocate its
15 DSLAM in the incumbent's RT, on the same terms and conditions that
16 apply to its own DSLAM."¹⁹ In a forward-looking network, Ameritech-
17 IL's affiliate will achieve DSLAM functionality at the RT through the line
18 cards placed in the DLC. Thus, a collocation option that allows
19 competitors to have the incumbent place its line cards in the incumbent's
20 DLCs is necessary to comply with the *UNE Remand Order*. Allowing

¹⁷ *UNE Remand Order* at ¶ 98 (footnotes and citations omitted).

¹⁸ The competitor should be able to choose whether to own the line card itself or to obtain an incumbent-owned line card.

¹⁹ *UNE Remand Order* at ¶ 313.

1 new entrants to place their line-card-based "DSLAMs" at the RT permits
2 them to collocate on the same terms and conditions as apply to the
3 incumbent's (or its affiliate's) DSLAM. Without such an option,
4 competitors will not be able to collocate DSLAMs in the incumbent's RT
5 on the same terms and conditions that apply to the incumbent's own
6 DSLAM.

7 This option not only is consistent with the *UNE Remand Order*, it
8 is essential to ensure that Illinois consumers have access to the full range
9 of DSL-based services that are technically feasible. Ameritech-IL may
10 choose not to equip each of its DLCs with line cards that can provide the
11 full technically feasible array of DSL-based services. Instead, SBC may
12 reach strategic decisions to place cards only to accommodate certain
13 services that its affiliates intend to offer at each location. By adopting
14 costs and prices for the subloop components necessary to accommodate
15 collocation of requesting carriers' line cards at the incumbent's DLC, the
16 Commission can enable competitors to offer DSL options that the
17 incumbent chooses not to provide, at a particular RT or at all. The option
18 to place CLEC-owned line cards at the RT also helps to guard against
19 overpricing of the functionality of line cards on the part of Ameritech-IL.

20 19. Q. SHOULD THE COMMISSION BE CONCERNED THAT ITS
21 DECISION TO REQUIRE AMERITECH-IL TO OFFER ACCESS
22 TO THE PROJECT PRONTO ARCHITECTURE ON AN
23 UNBUNDLED NETWORK ELEMENT BASIS WILL HAVE A

**CHILLING EFFECT ON SBC'S INCENTIVE TO INVEST IN
NETWORK MODERNIZATION, AS MS. CHAPMAN SUGGESTS?**

A. No. For months after SBC as a corporation announced its Project Pronto investment plans, the company's own documents indicate that it expected to offer access to those facilities as unbundled network elements. Indeed, SBC was still considering the alternative of allowing competitors to own their own line cards in the Project Pronto DLCs for some time after the decision to invest in Pronto had already been formally announced. Thus, it is clear that SBC was willing to go forward with this investment even if it had to unbundle the Project Pronto architecture and even if it had to allow competitors to own their own line cards. Ameritech-IL cannot plausibly maintain that a Commission decision to require unbundling of Project Pronto qualifies as such a "burdensome unbundling requirement" (*cf.* Chapman Direct at 14 and 15) that the company would not be willing to undertake similar future investments.

Moreover, Ms. Chapman's repeated suggestion (*see, for example,* page 12 of her rehearing direct testimony) that a requirement to unbundle Project Pronto would somehow undermine Ameritech-IL's ability to achieve the market-required return for such an investment is absurd. Ms. Chapman herself emphasizes that Ameritech-IL is offering to provide its wholesale broadband service at TELRIC-based prices. The pricing standard for an unbundled Project Pronto architecture would be identical. Moreover, as both Ameritech-IL and this Commission are well aware,

1 TELRIC-based prices include a market-required return on investment.
2 Thus, Ameritech-IL would be equally able to earn a market-required
3 return on investment under either an unbundling requirement or its
4 voluntary commitments — if, of course, Ameritech-IL truly plans to fulfill
5 its commitment to the FCC to offer the wholesale broadband service
6 offering at TELRIC-based prices.

7 For all of these reasons, Ms. Chapman's rhetoric at page 13 of her
8 direct testimony concerning the beneficial effect of Project Pronto on jobs,
9 broadband access for schools and telecommuting is largely irrelevant to
10 the issues in this rehearing, except insofar as it illustrates the *even greater*
11 benefits to the Illinois economy and Illinois consumers from enhancing the
12 utility of Project Pronto. If competitors such as Rhythms can obtain
13 unbundled network elements based on the Project Pronto architecture, they
14 can develop innovative applications that Ameritech-IL may not have
15 imagined or be prepared to offer.

16 20. Q. MS. CHAPMAN ALSO ARGUES THAT AMERITECH-IL HAS
17 SOMEHOW GONE BEYOND THE MINIMUM REQUIREMENTS
18 UNDER THE TELECOMMUNICATIONS ACT OF 1996 IN
19 VOLUNTARILY OFFERING THE WHOLESALE BROADBAND
20 SERVICE AND THAT THIS BEHAVIOR REFLECTS THE
21 ACTIONS OF A COMPANY IN A COMPETITIVE MARKET,
22 DEVELOPING PRODUCTS TO MEET CUSTOMER DEMAND. IS

1 **HER CHARACTERIZATION OF AMERITECH-IL'S**
2 **WHOLESALE BROADBAND SERVICE APT?**

3 A. No. The market for wholesale broadband capability in Illinois is anything
4 but a competitive market, and Ameritech-IL's actions to date are anything
5 but the actions of a supplier seeking to meet customer demand. CLECs
6 have unambiguously expressed their "demand" for UNEs based on the
7 Project Pronto architecture. Ameritech-IL has acted like a self-interested
8 monopolist in refusing to meet that demand and instead putting forward a
9 "take it or leave it" wholesale service offering that does not have the
10 attributes that its wholesale "customers" (CLECs) want or need.

11 I also note that SBC "volunteered" to offer its wholesale
12 broadband service as a *quid pro quo* for obtaining a waiver of one of the
13 SBC/Ameritech merger conditions, and not as a market-driven response to
14 CLEC demand. Ameritech-IL's repeated attempts to narrow (and even
15 define away) its voluntary commitments to the FCC concerning Project
16 Pronto are themselves ample evidence that the company is not investing in
17 this network architecture for the benefit of CLECs.

18 21. Q. **MS. CHAPMAN REFERENCES THE FCC'S *SBC WAIVER ORDER***
19 **AS EVIDENCE THAT THE FCC HAS ALREADY DETERMINED**
20 **THE WHOLESALE BROADBAND SERVICE OFFERING TO BE**
21 **PRO-COMPETITIVE AND IN THE PUBLIC INTEREST.²⁰ DO**

²⁰ Chapman Direct at 9-10.

1 **YOU AGREE WITH HER CHARACTERIZATION OF THAT**
2 **DECISION?**

3 A. No, I do not. What Ms. Chapman fails to note is that the FCC made its
4 findings in a very limited context, namely, the determination of whether
5 SBC should be granted a waiver of certain ownership requirements for
6 advanced services equipment under the SBC/Ameritech merger
7 conditions. The FCC certainly did not conclude that the wholesale
8 broadband service offering was *preferable to* a requirement for the SBC-
9 affiliated incumbents to unbundle their Project Pronto networks. Indeed,
10 the FCC is actively considering that very unbundling requirement at this
11 time.

12 For similar reasons, Ms. Chapman's suggestion that a requirement
13 to unbundle Project Pronto would be contrary to the FCC's determinations
14 in the *UNE Remand Order* makes no sense. The FCC itself is considering
15 such unbundling requirements, in full awareness of its own
16 pronouncements in the *UNE Remand Order* (which the FCC had made
17 prior to having record evidence concerning Project Pronto). Furthermore,
18 a closer examination of the *UNE Remand Order* language that Ms.
19 Chapman cites at page 16 of her direct testimony reveals that the FCC was
20 referencing "[t]he *new standards and framework* we adopt in the Order for
21 determining which network elements incumbent LECs must make
22 available on an unbundled basis," and not the specific set of network
23 elements enumerated in that Order, as removing uncertainties concerning

1 unbundling.²¹ As I have already explained above, a Commission decide to
2 require unbundling of Project Pronto would be entirely consistent with my
3 understanding of the standards and framework for unbundling that the
4 FCC adopted in the *UNE Remand Order*.

5 22. Q. AT PAGE 13 OF HIS REHEARING DIRECT TESTIMONY, MS.
6 CHAPMAN FURTHER SUGGESTS THAT THE ACT'S
7 UNBUNDLING REQUIREMENT SHOULD APPLY ONLY TO
8 THE INCUMBENTS' EMBEDDED NETWORKS, AND NOT TO
9 NEW INVESTMENTS SUCH AS PROJECT PRONTO. IS HER
10 REASONING SOUND?

11 A. No. Ms. Chapman cites the FCC's *UNE Remand Order* for the
12 proposition that the unbundling requirement is intended to "reduce
13 inherent economic and operational advantages"²² that incumbents such as
14 Ameritech-IL possess by virtue of their prior monopoly franchise.
15 Unfortunately for Ms. Chapman's argument, Project Pronto is a prime
16 example of the "inherent economic and operational advantages" of
17 incumbents to which the FCC was referring. Ms. Chapman and Mr. Lube
18 both stress the notion that Project Pronto is an "overlay network" without
19 stopping to reflect that one cannot "overlay" a (relatively inexpensive)
20 network upgrade on an existing network unless one already possesses a
21 ubiquitous existing network, complete with all necessary rights-of-way,

²¹ *UNE Remand Order* at ¶ 5 (emphasis added).

1 existing loop structure (poles, conduit, *etc.*) and an embedded customer
2 demand sufficient to justify the incremental investment. Surely Ms.
3 Chapman cannot believe that any other competitor would be in a position
4 to fund a \$6 billion investment initiative out of the savings it would
5 achieve relative to its existing network operations expenses. Yet that is
6 precisely what SBC has bragged to its investors and the media that it will
7 be doing under Project Pronto — a feat achievable only because it is the
8 incumbent.

9 **II. SBC'S AGREEMENT WITH COVAD ESTABLISHED THAT THE**
10 **COMMISSION-ADOPTED NONRECURRING PRICES FOR LINE**
11 **SHARING ARE TOO HIGH.**

12 **23. Q. DOES AMERITECH-IL MAKE ANY EFFORT TO ESTABLISH**
13 **HOW THE PRICES ITS HAS OFFERED COVAD IN ILLINOIS**
14 **MIGHT BE REASONABLY COST-BASED BASED ON THE COST**
15 **SHOWING THAT AMERITECH-IL PRESENTED TO THE**
16 **COMMISSION IN THIS DOCKET?**

17 A. No. As I have shown in my verified statement, the non-recurring price in
18 the Covad agreement is *substantially* below the non-recurring cost that
19 Ameritech-IL asserts it will incur for other CLECs and that the
20 Commission adopted. It is not credible that Ameritech-IL would be
21 willing to offer Covad, or any other competitor, prices that would require
22 the incumbent to accept a significant loss on every sale. Thus, even taking

²² *UNE Remand Order at ¶ 3.*

1 into account the negotiated nature of the Covad/Ameritech-IL contract, the
2 Commission should presume that Ameritech-IL can provide the same
3 functionality to other competitors at the prices in that agreement without
4 bearing financial losses.

5 24. Q. MS. CHAPMAN ASSERTS THAT OTHER COMPETITORS IN
6 ILLINOIS SHOULD NOT BE ALLOWED TO ADOPT THE
7 PRICES IN THE SBC AGREEMENT WITH COVAD UNLESS
8 THEY ALSO ADOPT THOSE PRICES ON AN SBC-WIDE BASIS.
9 IS MS. CHAPMAN'S ARGUMENT REASONABLE?

10 A. No. Ms. Chapman attempts to justify Ameritech-IL's proposal to provide
11 a nonrecurring price for line sharing that is far below its claimed cost in
12 Illinois by suggesting that it may reflect a compromise between higher
13 prices in some states and lower prices in others. Being a witness for the
14 SBC incumbents in multiple states, however, Ms. Chapman is surely also
15 aware that SBC has a company-wide costing organization and cost model.
16 The nonrecurring costs and (supposedly) cost-based prices that SBC-
17 affiliated incumbents have defended across the SBC states are consistently
18 much higher than those in the SBC/Covad agreement, and the recurring
19 prices are consistently near or higher than the agreement's recurring price.
20 Thus, the SBC-affiliated incumbents have either consistently overstated
21 the costs for providing line-sharing-related elements and interconnection,
22 or SBC is willing to provide those same elements and interconnection

1 arrangements to Covad at a loss. The latter conclusion is simply not
2 plausible.

3 25. Q. DOES THAT CONCLUDE YOUR VERIFIED REBUTTAL
4 STATEMENT?

5 A. Yes, it does; however, I reserve the right to supplement my testimony if
6 relevant information becomes available subsequently.